

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2
3 WILLIAM A. MUNDELL
Chairman
4 JIM IRVIN
Commissioner
5 MARC SPITZER
Commissioner

6 In the matter of:) DOCKET NO. S-03387A-02-0000
7)
8 MARK E. LABERTEW and JANE DOE) **NOTICE OF OPPORTUNITY FOR**
LABERTEW) **HEARING REGARDING PROPOSED**
9 7451 East Beryl) **ORDER TO CEASE AND DESIST,**
Scottsdale, Arizona 85251) **ORDER FOR RESTITUTION, FOR**
10) **ADMINISTRATIVE PENALTIES, AND**
LES FLEISHMAN and JANE DOE FLEISHMAN) **FOR OTHER AFFIRMATIVE ACTION**
Southport S.D.G., Inc.)
11 5199 East Pacific Coast Highway, Suite 330N)
Long Beach, California 90804)
12)
Respondents.)
13)
14)

15 **NOTICE: EACH RESPONDENT HAS 10 DAYS TO REQUEST A HEARING (See VIII)**

16 **EACH RESPONDENT HAS 30 DAYS TO FILE AN ANSWER (See IX)**

17 The Securities Division ("Division") of the Arizona Corporation Commission ("Commission")
18 alleges that RESPONDENTS have engaged in acts, practices and transactions, which constitute
19 violations of the Securities Act of Arizona, A.R.S. § 44-1801 *et seq.* ("Securities Act").

20 **I.**

21 **JURISDICTION**

22 1. The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona
23 Constitution and the Securities Act.

24 **II.**

25 **RESPONDENTS**

26 2. RESPONDENT MARK E. LABERTEW ("LABERTEW") at all times relevant hereto
was an individual and a resident of the state of Arizona.

1 issuer.

2 9. E*Credit, Inc. ("E*Credit"), at all times relevant hereto, was a Delaware corporation
3 authorized to do business in Arizona. E*Credit was incorporated on or about February 9, 1999, and
4 was authorized to do business in Arizona on or about February 9, 1999. At all times relevant hereto,
5 LABERTEW was the President, Chief Executive Officer, and a Director of E*Credit. E*Credit held
6 itself out as being in the business of sub-prime automotive lending. E*Credit's authority to do business in
7 Arizona was revoked on or about June 6, 2002, by the Corporations Division of the Commission for
8 failure to file its required annual report with the Commission.

9 10. E*Credit has never been registered to sell securities in Arizona as a broker-dealer or an
10 issuer.

11 11. Southport S.D.G., Inc. ("Southport"), at all times relevant hereto, was a California
12 corporation, with its principal office at 5199 East Pacific Coast Highway, Suite 330N, Long Beach,
13 California 90804. Southport acted as Tracker's agent for the purposes of selling shares of Tracker
14 stock. Southport has been registered with the National Association of Securities Dealers ("NASD") as a
15 securities dealer, CRD #46278. Southport is not currently registered with the NASD as a securities
16 dealer. Southport was never registered as a securities dealer in Arizona.

17 12. At all times relevant hereto, FLEISHMAN was both a Director of Tracker and the
18 President of Southport. At times, FLEISHMAN was registered with the NASD as a securities broker,
19 CRD #8975931. FLEISHMAN is not currently registered as a securities broker with the NASD.
20 FLEISHMAN was never registered to sell securities within or from Arizona.

21 **Sales of Stock in Tracker**

22 13. Beginning on or about May 22, 1998, RESPONDENTS sold shares of common stock
23 in Tracker within or from Arizona.

24 14. On or about December 10, 1998, Tracker filed a Form D, Notice of Sale of Securities
25 Pursuant to Regulation D, Section 4(6), and/or Uniform Limited Offering Exemption ("Form D") with the
26 Division. In this filing, Tracker gave notice it intended to make a limited offering of common stock

1 totaling \$5,000,000 to residents of the states of Alabama, Georgia, Hawaii, Minnesota, New York, and
2 Oregon, pursuant to the federal registration exemption for such an offering. That federal exemption is
3 recognized as an exemption from registration under Arizona law.

4 15. On its Form D, Tracker indicated it was a Delaware corporation, although it actually is
5 an Arizona corporation, incorporated with the Corporations Division of the Commission on or about
6 October 23, 1998.

7 16. Although Tracker filed a Form D with the Division, Tracker's Form D did not indicate it
8 intended to offer shares to residents of Arizona, or of any state other than those listed.

9 17. Because RESPONDENTS began selling Tracker stock on or about May 22, 1998,
10 RESPONDENTS failed to comply with the requirement of R14-4-126(D)(1)(a), Ariz. Admin. Code,
11 calling for filing of an initial Form D within fifteen days after the date of first sale of securities for which the
12 filer seeks a registration exemption.

13 18. RESPONDENTS failed to comply with the requirements of R14-4-126(D), Ariz.
14 Admin. Code, which called for filing of an updated Form D with the Division following termination or
15 completion of the offering.

16 19. In the course of the offer and sale of shares of Tracker common stock,
17 RESPONDENTS directly or indirectly (i) employed a device, scheme or artifice to defraud; (ii) made
18 untrue statements of material fact or omitted to state material facts that were necessary to make the
19 statements made not misleading in light of the circumstances under which they were made; and
20 (iii) engaged in transactions, practices, or courses of business that operated or would operate as a fraud
21 or deceit upon offerees and investors. RESPONDENTS' conduct includes, but is not limited to:

22 a) RESPONDENTS represented that the stock would be sold as a limited offering,
23 that is, that only accredited investors would be permitted to purchase the shares and that there
24 would be no public offering of those shares. In fact, RESPONDENTS and their employees
25 and/or agents "cold-called" prospective investors, thus making a public offering of the shares.
26 RESPONDENTS also accepted investments from persons who did not meet the income, asset,

1 or knowledge requirements for investors in a limited offering. RESPONDENTS failed to advise
2 potential investors of the possible consequences of its failure to abide by the requirements for a
3 limited offering, and of its failure to register the shares for sale.

4 b) RESPONDENTS represented that particular companies intended to purchase
5 Tracker's GPS unit to be placed in vehicles owned by those companies. In fact, some
6 companies had not even been in contact with Tracker regarding its GPS unit, and other
7 companies, although they had been in contact with Tracker (usually because Tracker employees
8 or agents had contacted them), did not intend to purchase Tracker's GPS unit.

9 c) RESPONDENTS did not adequately reveal the purposes for which the funds
10 invested in Tracker common stock would be used.

11 d) RESPONDENTS failed to give investors adequate information regarding actual
12 and/or potential conflicts of interest involving LABERTEW that arose from his simultaneously
13 serving as President of Tracker, E*Credit, and other entities.

14 e) RESPONDENTS did not disclose the possible conflict of interest of
15 FLEISHMAN as a Director of Tracker and an officer of Southport.

16 f) RESPONDENTS did not disclose FLEISHMAN's criminal history or the
17 existence and substance of regulatory sanctions entered against FLEISHMAN.

18 g) RESPONDENTS failed to provide to potential investors material financial
19 statements and reports prepared in accordance with generally accepted accounting principles and
20 prepared at a time reasonably near the sale of the securities to investors. Such reports were
21 necessary to give potential investors an understanding of the current financial condition of
22 Tracker, its business, and the securities being offered. In particular, RESPONDENTS failed to
23 provide to potential investors an audited balance sheet, income statements, cash flow, and/or
24 changes in stockholders' equity statements for the issuer. The only financial information provided
25 was an unaudited balance sheet as of July 31, 1998, a significant period of time prior to the offers
26 and sales.

h) LABERTEW failed to disclose material adverse business and legal matters related to his business experience and involvement, which occurred within five years prior to the offering and sale of Tracker stock, including orders issued against Tracker and LABERTEW by Pennsylvania and Oregon securities regulatory entities.

i) RESPONDENTS continued to cause issuance of shares of stock in Tracker after the Commission had terminated Tracker's authority to do business.

20. RESPONDENTS sold or transferred at least 12,425,800 shares of Tracker stock to at least 200 individuals or entities.

21. On information and belief, RESPONDENTS collected more than \$3 million dollars as a result of their sales or transfers of stock in Tracker.

Sales of Stock in E*Credit

22. Beginning on or about October 5, 1999, RESPONDENTS sold shares of common stock in E*Credit within or from Arizona.

23. E*Credit's stock offering was not registered with the Division, and E*Credit did not make any filing with the Division regarding any exemption from registration. E*Credit's stock sales apparently were made pursuant to a Disclosure Memorandum dated October 5, 1999, which stated E*Credit intended to rely upon a private placement exemption from registration.

24. In the course of the offer and sale of shares of E*Credit stock, RESPONDENTS directly or indirectly (i) employed a device, scheme or artifice to defraud; (ii) made untrue statements of material fact or omitted to state material facts that were necessary to make the statements made not misleading in light of the circumstances under which they were made; and (iii) engaged in transactions, practices, or courses of business that operated or would operate as a fraud or deceit upon offerees and investors. RESPONDENTS' conduct includes, but is not limited to:

a) RESPONDENTS represented that the stock would be sold as a limited offering, that is, that only accredited investors would be permitted to purchase the shares and that there would be no public offering of those shares. In fact, RESPONDENTS and their employees

1 and/or agents “cold-called” prospective investors, thus making a public offering of the shares.
2 RESPONDENTS also accepted investments from persons who did not meet the income, asset,
3 or knowledge requirements for investors in a limited offering. RESPONDENTS failed to advise
4 potential investors of the possible consequences of their failure to abide by the requirements for a
5 limited offering, and of their failure to register the shares for sale.

6 b) RESPONDENTS failed to disclose adequately the relationship between
7 E*Credit and Tracker and potential conflicts of interest arising therefrom, although they
8 represented that E*Credit would purchase GPS units from Tracker to be placed in vehicles
9 financed by E*Credit.

10 c) RESPONDENTS did not disclose the possible conflict of interest of
11 FLEISHMAN as a Director of Tracker and an officer of Southport.

12 d) RESPONDENTS did not disclose FLEISHMAN’s criminal history or the
13 existence and substance of regulatory sanctions entered against FLEISHMAN.

14 e) RESPONDENTS did not disclose the actual and/or potential conflict of interest
15 of LABERTEW as President of E*Credit and President of Tracker, as well as President of other
16 business entities.

17 f) RESPONDENTS did not adequately reveal the purposes for which the
18 E*Credit stock investments would be utilized by E*Credit and RESPONDENTS.

19 g) RESPONDENTS failed to provide to potential investors material financial
20 statements and/or financial information and reports prepared in accordance with generally
21 accepted accounting principles and prepared at a time reasonably near the sale of the securities
22 to investors. Such reports were necessary to give potential investors an understanding of the
23 current financial condition of E*Credit, its business, and the securities being offered. In
24 particular, RESPONDENTS failed to provide to potential investors an audited balance sheet,
25 income statements, cash flow, and/or changes in stockholders’ equity statements for the issuer.

26 h) LABERTEW failed to disclose material adverse business and legal matters

1 related to his business experience and involvement, which occurred within five years prior to the
2 offering and sale of E*Credit stock, including orders against LABERTEW entered by securities
3 regulatory agencies in Oregon and Pennsylvania.

4 25. RESPONDENTS sold or transferred at least 24,580,000 shares of E*Credit stock to at
5 least 41 persons or entities.

6 26. On information and belief, RESPONDENTS collected \$65,000 or more as a result of
7 their sales or transfers of E*Credit stock.

8 **IV.**

9 **VIOLATION OF A.R.S. § 44-1841**

10 **(Offer or Sale of Unregistered Securities)**

11 27. From on or about May 22, 1998 through on or about September 23, 2002,
12 RESPONDENTS offered or sold securities in the form of shares of stock in Tracker, within or from
13 Arizona.

14 28. From on or about February 12, 2000 through on or about December 20, 2000,
15 RESPONDENTS offered or sold securities in the form of shares of stock in E*Credit, within or from
16 Arizona.

17 29. The securities referred to above were not registered pursuant to the provisions of Articles
18 6 or 7 of the Securities Act, and were not exempt from registration thereunder.

19 30. This conduct violates A.R.S. § 44-1841.

20 . . .

21 **V.**

22 **VIOLATION OF A.R.S. § 44-1842**

23 **(Transactions by Unregistered Dealers or Salesmen)**

24 31. RESPONDENTS offered or sold securities within or from Arizona, while not registered
25 as dealers or salesmen pursuant to the provisions of Article 9 of the Securities Act.

26 32. This conduct violates A.R.S. § 44-1842.

VI.**VIOLATION OF A.R.S. § 44-1991****(Fraud in Connection with the Offer or Sale of Securities)**

33. In connection with the offer or sale of securities within or from Arizona, RESPONDENTS directly or indirectly: (i) employed a device, scheme or artifice to defraud; (ii) made untrue statements of material fact or omitted to state material facts which were necessary in order to make the statements made not misleading in light of the circumstances under which they were made; and (iii) engaged in transactions, practices or courses of business which operated or would operate as a fraud or deceit upon offerees and investors. RESPONDENTS' conduct includes, but is not limited to, the following:

a) RESPONDENTS represented that stock in Tracker and in E*Credit would be sold as limited offerings, that is, that only accredited investors would be permitted to purchase the shares and that there would be no public offering of those shares. In fact, RESPONDENTS and their employees and/or agents "cold-called" prospective investors, thus making a public offering of the shares. RESPONDENTS also accepted investments from persons who did not meet the income, asset, or knowledge requirements for investors in a limited offering. RESPONDENTS failed to advise potential investors of the possible consequences of their failure to abide by the requirements for limited offerings, and of their failure to register the shares for sale.

b) RESPONDENTS represented that particular companies intended to purchase Tracker's GPS unit to be placed in vehicles owned by those companies. In fact, some companies had not even been in contact with Tracker regarding its GPS unit, and other companies, although they had been in contact with Tracker (usually because Tracker employees or agents had contacted them), did not intend to purchase Tracker's GPS unit.

c) RESPONDENTS failed to disclose adequately the relationship between E*Credit and Tracker and potential conflicts of interest arising therefrom, although they represented that E*Credit would purchase GPS units from Tracker to be placed in vehicles

1 financed by E*Credit.

2 d) RESPONDENTS failed to disclose actual and/or potential conflicts of interest on
3 the part of LABERTEW as an officer of both Tracker and E*Credit, and as an officer and/or
4 director of other business entities to which cash from Tracker was transferred.

5 e) RESPONDENTS did not disclose the possible conflict of interest of
6 FLEISHMAN as a Director of Tracker and an officer of Southport.

7 f) RESPONDENTS did not disclose FLEISHMAN's criminal history or the
8 existence and substance of regulatory sanctions entered against FLEISHMAN.

9 g) RESPONDENTS did not adequately reveal the purposes to which the Tracker
10 and E*Credit stock investments would be used by Tracker, E*Credit, and RESPONDENTS.

11 h) RESPONDENTS failed to provide to potential investors material financial
12 statements and/or financial information and reports prepared in accordance with generally
13 accepted accounting principles and prepared at a time reasonably near the sale of the securities
14 to investors. Such information and reports were necessary to give potential investors an
15 understanding of the current financial condition of Tracker and/or E*Credit, their business, and
16 the securities being offered. For example, RESPONDENTS failed to provide to potential
17 investors an audited balance sheet, income statements, cash flow, and/or changes in
18 stockholders' equity statements for the issuer.

19 i) LABERTEW failed to disclose material adverse business and legal matters
20 related to his business experience and involvement, which occurred within five years prior to the
21 offering and sale of stock in Tracker and/or E*Credit, including orders entered against
22 LABERTEW by securities regulatory agencies in Oregon and Pennsylvania.

23 34. This conduct violates A.R.S. § 44-1991.

24 35. RESPONDENTS made, participated in, or induced the sale of a security within the
25 meaning of A.R.S. §44-2003. Therefore, RESPONDENTS are jointly and severally liable for the
26 above violations of A.R.S. §§ 44-1841, 44-1842, and 44-1991.

VII.

REQUESTED RELIEF

The Division requests that the Commission grant the following relief against RESPONDENTS:

1. Order RESPONDENTS to permanently cease and desist from violating the Securities Act, pursuant to A.R.S. § 44-2032;
2. Order RESPONDENTS to take affirmative action to correct the conditions resulting from their acts, practices or transactions, including a requirement to make restitution pursuant to A.R.S. § 44-2032;
3. Order RESPONDENTS to pay the state of Arizona administrative penalties of up to five thousand dollars (\$5,000) for each violation of the Securities Act, pursuant to A.R.S. § 44-2036; and
4. Order any other relief that the Commission deems appropriate.

VIII.

HEARING OPPORTUNITY

RESPONDENTS (including RESPONDENT SPOUSES) may request a hearing pursuant to A.R.S. § 44-1972 and Ariz. Admin. Code R14-4-306. **If any RESPONDENT requests a hearing, the RESPONDENT must also answer this Notice.** A request for hearing must be in writing and received by the Commission within 10 business days after service of this Notice of Opportunity for Hearing. Each RESPONDENT must deliver or mail the request to Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona 85007. A Docket Control cover sheet must accompany the request. A cover sheet form and instructions may be obtained from Docket Control by calling (602) 542-3477 or on the Commission's Internet web site at www.cc.state.az.us/utility/forms/index.htm.

If a request for a hearing is timely made, the Commission shall schedule the hearing to begin 20 to 60 days from the receipt of the request unless otherwise provided by law, stipulated by the parties, or ordered by the Commission. If a request for a hearing is not timely made, the Commission may, without a hearing, enter an order against each RESPONDENT granting the relief requested by the Division in this

1 Notice of Opportunity for Hearing.

2 Persons with a disability may request a reasonable accommodation such as a sign language
3 interpreter, as well as request this document in an alternative format, by contacting Shelly M. Hood,
4 Executive Assistant to the Executive Secretary, voice phone number 602/542-3931, e-mail
5 shood@cc.state.az.us. Requests should be made as early as possible to allow time to arrange the
6 accommodation.

7 **XIV.**

8 **ANSWER REQUIREMENT**

9 Pursuant to A.A.C. R14-4-305, if any RESPONDENT requests a hearing, RESPONDENT
10 must deliver or mail an Answer to this Notice of Opportunity for Hearing to Docket Control, Arizona
11 Corporation Commission, 1200 W. Washington, Phoenix, Arizona 85007, within 30 calendar days after
12 the date of service of this Notice of Opportunity for Hearing. A Docket Control cover sheet must
13 accompany the Answer. A cover sheet form and instructions may be obtained from Docket Control by
14 calling (602) 542-3477 or on the Commission's Internet web site at
15 www.cc.state.az.us/utility/forms/index.htm.

16 Additionally, RESPONDENT must serve the Answer upon the Division. Pursuant to A.A.C.
17 R14-4-303, service upon the Division may be made by mailing or by hand-delivering a copy of the
18 Answer to the Division at 1300 West Washington, 3rd Floor, Phoenix, Arizona, 85007, addressed to
19 Kathleen Coughenour DeLaRosa.

20 The Answer shall contain an admission or denial of each allegation in this Temporary Order and
21 Notice and the original signature of each RESPONDENT or RESPONDENT's attorney. A statement of
22 a lack of sufficient knowledge or information shall be considered a denial of an allegation. An allegation
23 not denied shall be considered admitted.

24 When RESPONDENT intends in good faith to deny only a part or a qualification of an allegation,
25 RESPONDENT shall specify that part or qualification of the allegation and shall admit the remainder.
26 RESPONDENT waives any affirmative defense not raised in the answer.

1 The officer presiding over the hearing may grant relief from the requirement to file an Answer for
2 good cause shown.

3 DATED this 18th day of December, 2002.

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5
6 /s/ Mark Sendrow

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8 Mark Sendrow
9 Director of Securities
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